

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35926

STATE OF IDAHO,)	2009 Unpublished Opinion No. 628
)	
Plaintiff-Respondent,)	Filed: October 5, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
AGENCY BAIL BONDS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Real Party in Interest-Appellant,)	BE CITED AS AUTHORITY
)	
and)	
)	
PATRICIA HANEY,)	
)	
Defendant.)	
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. James R. Michaud, District Judge. Hon. Barbara A. Buchanan, Magistrate.

Order of the district court, on intermediate appeal, affirming the magistrate's denial of motion to set aside forfeiture and exonerate bond, affirmed.

Stephen T. Snedden of Featherston Law Firm, Chtd., Sandpoint, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Karin Magnelli, Deputy Attorney General, Boise, for respondent.

PERRY, Judge Pro Tem

Agency Bail Bonds, as the real party in interest, appeals from the district court's order, on intermediate appeal, affirming the magistrate's denial of Agency's motion to set aside forfeiture and exonerate bond. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Patricia Haney was convicted of driving under the influence. The magistrate suspended Haney's sentence and placed her on probation for two years. Haney was subsequently arrested

for a probation violation and released on a \$10,000 bond posted by Agency. The bond agreement provided:

The condition of this bond is such that [Haney] shall personally appear in the above Court . . . and to do and receive what shall be by said Court then and there enjoined upon [her], and shall not depart the said Court without leave, . . . but not to exceed beyond the time of the verdict of the jury, or a plea of guilty by [Haney], except will at all times hold [herself] amenable to the orders and process of the Court, and if convicted, will appear for judgment and render [herself] in execution thereof, or if [she] fails to perform either of these conditions, that [Agency] will pay . . . the sum of 10,000.00.

Haney appeared at the hearing on her probation violation and was sentenced to a term of confinement of 132 days. The magistrate then granted Haney leave to report to the jail three days after sentencing to allow her to make arrangements for her work and property. Haney failed to appear at the jail to serve her sentence as ordered. The magistrate ordered the bond to be forfeited and denied Agency's motion to set aside forfeiture and exonerate bond. Agency filed a motion to reconsider which the magistrate also denied.

Agency appealed the magistrate's denial of its motion to set aside forfeiture and exonerate bond to the district court. The district court affirmed the magistrate's order, reasoning that the language of the bond clearly and unambiguously provided that Agency would guarantee Haney's appearance for judgment and would render herself for execution of her sentence. The district court held that, when Haney failed to fulfill those conditions, the forfeiture of bond was appropriate. Agency again appeals.

II.

ANALYSIS

Agency argues that its bond should not be deemed to ensure Haney's appearance for service of her sentence after the three-day release because I.C. § 19-2703 prohibits a trial court from releasing a defendant after a judgment of imprisonment is pronounced.¹ Furthermore, Agency contends that I.C.R. 46(a), I.C. § 19-2906, and I.C. § 19-2909 limit the scope of bail to

¹ Idaho Code Section 19-2703 provides: "If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with."

the proceedings prior to sentencing.² Agency also argues that the magistrate's release of Haney on bond after sentencing increased its risk and, therefore, discharged it from its contractual surety obligation. Additionally, Agency argues that the release of defendants after sentencing is contrary to public policy. The state responds that the magistrate had authority to extend Haney's bond after sentencing because Idaho statutes do not limit bond to the time prior to sentencing. Furthermore, the state contends that Agency's bond agreement in this case provided that it would guarantee Haney's presence for judgment and that she would render herself for execution of her

² Idaho Criminal Rule 46(a), at all pertinent times in this case, provided in pertinent part:

A person arrested for an offense not punishable by death shall be admitted to bail or may be released upon defendant's own recognizance at any time before a plea of guilty or verdict of guilty, after which the defendant may be admitted to bail or released on defendant's own recognizance before sentencing in the discretion of the court. . . .

Idaho Code Section 19-2906, which was repealed by the Idaho Bail Act of 2009, at all pertinent times in this case, provided:

(1) If the offense is bailable, the defendant may be admitted to bail before conviction:

(a) For his appearance before the magistrate on the examination of the charge, before being held to answer.

(b) To appear at the court to which the magistrate is required to return the depositions upon the defendant being held to answer after examination.

(c) After indictment, either before the bench warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

(2) After conviction, and upon an appeal:

(a) If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed, modified, or the appeal is dismissed.

(b) If judgment of imprisonment has been given, upon its being affirmed or modified, or upon the appeal being dismissed; or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

Idaho Code Section 19-2909, which was repealed by the Idaho Bail Act of 2009, provided the form bond language guaranteeing that a convicted defendant "will appear for pronouncement of judgment."

sentence. Therefore, the state contends that Agency did not suffer from an increased risk by Haney's release on bond after sentencing. Both parties request attorney fees on appeal. Agency presents a question of law, over which we exercise free review. *State v. O'Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990).

A. Authority to Release Haney on Bond after Sentencing

First, we consider Agency's argument that the magistrate was statutorily prohibited from releasing Haney on bond after sentencing and prior to her incarceration. Agency argues that the language of I.C. § 19-2703 requires that, after sentencing, a defendant must be committed forthwith to the custody of the state. Agency contends that "forthwith" means immediately and without delay. Therefore, Agency concludes that the common procedure utilized by the trial courts of granting some defendants a brief time after sentencing during which to arrange their affairs before serving their sentence is an illegal practice.

The Idaho Supreme Court acknowledged this practice in *State v. Johnson*, 101 Idaho 581, 618 P.2d 759 (1980). The underlying facts of *Johnson* are similar to the present case. The district court sentenced Johnson and then granted a three-day stay of execution of his sentence to permit him to put his affairs in order. When Johnson failed to report for execution of his sentence, a bench warrant was issued and, when he was apprehended, the district court gave Johnson a more severe sentence than it originally imposed. Johnson argued that the district court did not have authority to increase his sentence because it no longer had jurisdiction. The Supreme Court held that "the district court had jurisdiction to withdraw its sentence and impose a new one since the defendant has not commenced serving the original sentence." *Johnson* at 585, 618 P.2d at 763. In a footnote the Court stated in dicta:

Although not raised as an issue in this appeal by either party, the practice followed by the court in this case of sentencing defendant and then giving him three days to get his affairs in order before commencing the serving of his sentence, appears to be contrary to the terms of I.C. [§] 19-2703 If the trial courts intend to give a defendant time to get his affairs in order prior to commencing serving his sentence, the court should delay the imposition of that sentence until the end of the period of time that the defendant is allowed free to get his affairs in order. . . .

Id. at 585 n.2, 618 P.2d at 763 n.2.

Agency argues that the quoted footnote from *Johnson* supports its reading of I.C. § 19-2703. However, this is not part of the Supreme Court's holding and, accordingly, is not binding

upon this Court. Moreover, to interpret this footnote as a statement that the district court had no authority to stay the execution of the sentence would be inconsistent with the Supreme Court's actual holding that the district court retained authority to resentence Johnson after the stay was granted.

In addressing Agency's public policy argument, the practice of granting a stay of execution has become common for various reasons including judicial economy and jail efficiency, in addition to reasons personal to those so sentenced. For example, in many counties it may be more convenient for the defendant and the state if a short jail sentence is executed over a weekend, rather than in the middle of the week. Were we to agree with Agency's interpretation of I.C. § 19-2703, this practice would have to cease and all defendants would be required to be committed mid-week or the trial courts would be required to hold sentencing hearings only on Fridays. No statute, rule, or judicial decision supports such a restrictive reading prohibiting this practice or forbids it. Therefore, we conclude that the magistrate had authority to grant a stay of execution between the time of sentencing and the execution of sentence in order for Haney to put her affairs in order.

Next, we consider Agency's argument that, even if the magistrate had legal authority to grant a stay of execution of Haney's sentence, it impermissibly extended Agency's bond obligations by so doing. A bail bond agreement is a suretyship contract between the state on one side and an accused and his or her surety on the other side, whereby the surety guarantees the appearance of an accused. *State v. Abracadabra Bail Bonds*, 131 Idaho 113, 116, 952 P.2d 1249, 1252 (Ct. App. 1998). The extent of the surety's undertaking is determined by the bond agreement and is subject to the rules of contract law and suretyship. *Id.* The primary aim in interpreting contracts is to ascertain the mutual intent of the parties at the time their contract is made. *State v. Castro*, 145 Idaho 993, 995, 188 P.3d 935, 937 (Ct. App. 2008). The intent should, if possible, be ascertained from the language of the agreement, as the words used by the parties are deemed to be the best evidence of their intent. *Id.*

As quoted above, Agency's bond agreement in this case unambiguously provided that Haney would "appear for judgment and render [herself] in execution thereof." Agency agreed to guarantee Haney's presence on these two occasions. It was upon this language that the magistrate relied when it properly extended Haney's bond during the period of stay of execution of her sentence. When Haney failed to report as ordered, the bond was properly forfeited.

Therefore, the magistrate did not err by denying Agency's motion to set aside forfeiture and exonerate bond. Because we hold that Agency's bond agreement extended its obligations through sentencing and up to the execution of sentence, we do not address any of Agency's other arguments concerning the nature and scope of the surety relationship relating to bond agreements.

B. State Attorney Fees on Appeal

The state argues that it is entitled to attorney fees pursuant to I.C. § 12-121. An award of attorney fees may be granted under I.C. § 12-121 and I.A.R. 41 to the prevailing party and such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. *Rendon v. Paskett*, 126 Idaho 944, 945, 894 P.2d 775, 776 (Ct. App. 1995). Agency's argument that I.C. § 19-2703 prohibited the magistrate from granting a stay of execution of sentence, although determined to be without merit, was not a frivolous or unreasonable interpretation of law or extension thereof. Therefore, we award the state costs, but not attorney fees, on appeal.

III.

CONCLUSION

The magistrate had authority to grant a stay of execution of Haney's sentence and release her on bond after sentencing in order to put her affairs in order before reporting to jail. Agency's bond agreement unambiguously provided that it would guarantee Haney's presence at sentencing and that she would render herself in execution thereof. Haney failed to render herself for execution of her sentence. Therefore, the magistrate did not err by forfeiting bond. Accordingly, the district court's order, on intermediate appeal, affirming the magistrate's denial of Agency's motion to set aside forfeiture and exonerate bond, is affirmed. Costs are awarded to the state on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**